IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.1152 of 1994

CORAM: SWATANTER KUMAR,C.J.,&
S.C.DHARMADHIKARI, J.

Judgment reserved on 25th April 2007
Judgment delivered on 21st June 2007

JUDGMENT (Per Swatanter Kumar, C.J):-

1. This case was on the regular board of the court for sometime. Nobody appeared on behalf of the petitioner. Resultantly the case was adjourned for sometime. We waited for a while for the petitioner to take steps for making arrangement to appear in the matter. As no steps were taken and the petition is of the year 1994, we hardly found it appropriate to just dismiss the petition for default and therefore we proceeded to hear the matter and after hearing the counsel for the respondents, it was closed for orders on 25th April 2007.

2. The petitioner was working as a junior supervisor on ad-hoc basis in the respondent institute. Respondent No.1 is the Education Officer, Mumbai Municipal Corporation and is the controlling authority for all Municipal Schools in Mumbai. Being a qualified teacher in physical education department, the petitioner was appointed as a special teacher in physical education in the year 1971 and vide order dated 10th August 1991 the petitioner was asked to work as a junior supervisor with effect from 12th August 1991 till regular post was filled in. Copies of the office orders requiring the petitioner work as junior supervisor, physical education are at Exhibits A and B respectively annexed to the petition. According to the petitioner, the teacher who is appointed to teach specialized subject is called special teacher and teacher who teaches general subjects is called as general

teacher. The physical education falls in the category of special teachers. It is the further case of the petitioner that the promotional channel for subject teacher is different and he can be promoted to the rank of Deputy Teacher, Head Teacher, Beat Officer and Administrative Officer etc. There were 9 posts of junior supervisors, which were lying vacant and vide circular dated 1st June 1993, applications were invited from the teachers of the Municipal Schools with the following prescribed qualifications:

"i)Candidate must be graduate of any recognized University in Arts, Science, Commerce;

ii) Candidate must be B.Ed with physical education or equivalent qualification in physical education of a recognized University;

OR

Candidate should be a Diploma holder of C.P.Ed, T.P.Ed, or H.D.Ed from a recognized University;

iii) Candidate who have experience of at least 3 years as physical education teacher;

1. He should have necessary knowledge of Marathi and Hindi (Speaking and writing the said languages);

2. The salary prescribed for the post was Rs.1409-55-1545-65-1870-70-2010 efficient bar 70-2290 with motor bike allowance of Rs.320/- if he is using the said vehicle or Rs.160/- without vehicle. Out of the said 9 posts,3 posts were reserved for scheduled castes, 2 posts were reserved

for scheduled tribe, one for nomadic tribes and one for OBC, leaving two posts for open category"

3.The petitioner had applied in response to the said circular and 13 candidates were called for interview, out of which, 9 were given different appointments and they were appointed against permanent vacancies. Appointment letters were issued somewhere around 5th January 1994. Out of the vacancies available, 2 vacancies were given to respondent Nos. 3 and 4, initially on probation and later on they were confirmed. The petitioner challenges the appointments of respondent Nos.3 and 4 to the post of special teacher in the present petition on the ground that respondent Nos.3 and 4 were not qualified and did not possess the essential qualifications for appointment to that post. The circular dated 1st June 1993 was not adhered to by the respondents. The petitioner was better candidate to the said respondents being appointed to the said post and respondent Nos. 3 and 4 also did not fulfill condition No.3 of the said circular Exhibit A to the petition.

4. The case put forth by the official as well as private respondents is somewhat on common basis. It is averred that respondent No. 3 is fully qualified as per the circular and he was having post graduation in Arts, which he passed in 198 as well as M.P.Ed (Physical) in 1981 and had done Masters Degree in Education(Physical Education) (M.P.Ed) (Physical) in 1991. He joined the services as an ordinary teacher in 1971 and has been teaching different classes, as to the lower classes physical education teachers are not appointed. His qualification being that of for training in physical education, he was rightly considered for the said post of junior supervisor, physical education and his appointment to the said post was in accordance with the circular. Respondent No.4 also possesses degree in physical education and joined the

Municipal services as an ordinary teacher in 1979. In support of her experience she had enclosed experience certificates of having imparted physical education in New English School, Kherdi from the year 16th June 1976 to 12th June 1977 and then from 20th June 1977 to 18th June 1979.She had also put on record different experience certificates showing that she had imparted physical education in different schools and they were annexed to the reply at Exh 7 collectively. It is stated that the selection of respondent Nos. 3 and 4 for the post of junior supervisors, physical education, has been made as per the required qualifications mentioned in the advertisement and the circular dated 1st June 1993 on merits and the petition in fact merits dismissal.

5. The private respondents have specifically averred that the post in question is selection post and not promotional post. The respondents are possessed of requisite qualification and experience and in fact respondent No.3, besides having Masters Degree, has 22 years experience in taking classes of physical education and as such petitioner is guilty of suppressio vari and suggestio falsi and the petition should be dismissed.

6. The advertisement and the circular issued by the respondents dated 1st June 1993 clearly show that applications for the post of junior supervisors in physical education were invited from primary school teachers of the Mumbai Municipal Corporation. This circular cancelled the applications invited in terms of the circular dated 10th February 1991. The qualification required for the post of junior supervisor, physical education was stated to be that a person should have B.Ed. with Physical Education or equivalent degree in physical education from the recognized University or diploma in C.P. Ed, T.P.Ed or H D Ed from recognised University. Clause 3 of the said circular provided that minimum 3 years experience as physical trainer or instructor of the institute. This letter

clearly shows that appointment was by selection and the right could be exercised by the selected candidate to continue or not only during the period of probation. It is also an admitted position that candidates were interviewed and from out of the applications received, 9 appointments were made including that of respondent Nos. 3 and 4. There is nothing on record to show that respondent No. 3 did not possess degree and experience in terms of the circular. On the other hand he possessed Masters Degree and has adequate period of service experience, which is must, in excess of the prescribed period of 3 years. The mere fact that the petitioner was permitted to officiate or work on ad-hoc basis to the post in question i.e. junior supervisor (physical education) would not give the petitioner with any indefeasible right for being permanently appointed to that post. The selection board has found respondent Nos 3 and 4 on merit as more competent and desirable for being appointed to that post and unless and until such process of selection was vitiated being arbitrary or in violation of the recruitment rules or circular issued by the respondents governing the appointment to that post, the court would be very reluctant to interfere with the process of selection. Notice of this petition was issued but .no interim order was passed by the court. Years have gone by and respondent Nos. 3 and 4 have been confirmed and are working in those posts for all these years. In fact a doubt was also expressed on behalf of the respondents that probably in the meanwhile the petitioner might have also been promoted to that post. Be that as it may. Even in the rejoinder reply filed on behalf of the petitioner, the annexures annexed to the reply affidavit and the averments that respondent Nos. 3 and 4 were possessing requisite qualification was not denied. From the certificates filed on record it is apparent that both respondent Nos. 3 and 4 have requisite experience certificates in imparting education of the required subject.

7. Another point taken in the petition relates to the allegation that the experience certificates were not submitted by the respondents alongwith their

application or at the relevant time. Firstly, except bald allegation there is nothing on record before us to substantiate this plea. Secondly, the respondents have denied this allegation. We may also notice that the circular dated 1st June 1993 placed by the petitioner on record as Exhibit C states that applications alongwith requisite certificates, education experience certificates, as well as backward class certificates should be attached to the application. Any application, which was incomplete or was received late, was not to be considered in terms of clause of the advertisement. Once an application was received, and respondents were called for interview and they were selected, the presumption would be in favour of the events, which have happened in the normal course of business rather than against. The candidates were required to produce originals of their certificates only at the time of interview. We are unable to accept this allegation of the petitioner that certificates were not submitted alongwith the applications. The respondents have made specific averment on affidavit in this regard. It is settled principle of law that person who appears for interview is not conferred with any legal right to be appointed to the post merely because he fulfilled the requisite qualifications. A reference can be made to the decision of the --- High Court in the case of Ajit Singh vs Principle of Government College- RSA No. 54 of 1998 decided on 12th March 1998 wherein it was held as under:

> " It is settled principle of law that no person has a fundamental or legal right to be appointed. Where the department holds selection or interview for the purpose of making appointment then it is obliged to appoint a person out of such panel of interview; but where no appointment are made, the department cannot be forced to make appointment if they have valid reasons for doing so. The mere fact that the name of the appellant was sponsored by the employment exchange in no way provides an indefeasible right to the appellant for the appointment to the post of groundman, which post already

stood converted and appointment was made. Keeping in view these facts in mind there is .no merit in this appeal"

Yet in another case of Ajit Bal Singh and ors vs. State of Punjab and ors reported in 1998 (2)Service Cases Today 521 the Punjab and Haryana High Court held as under:

" In the office order issued by the Principal Secretary, Government of Punjab, Department of Home Affairs and Justice, it has clearly been stated that the Cabinet Sub-Committee on Fiscal Management had imposed a ban on recruitment to the post lying vacant or even which were likely to fell vacant due to retirement or for any other reason. This is a view of expert Managing Committee and its conclusion would hardly be open to judicial review. The claim of the petitioners was rejected by the said order, which does not suffer from the vice of arbitrariness or discrimination…… It is settled principle of law that a selected candidate does not have any right to claim appointment. In this regard reference can be made to the judgment of Hon`ble Supreme Court in the case of N.Mohanan Vs State of Kerala and ors 1997 (2) Recent Services Judgment, 772… The petitioners amongst other cleared the written examinations and thereafter were interviewed and no final merit list was even published".

8. Much less this even a selected candidate is not vested with any indefeasible right for appointment to the post as held by the court repeatedly and reference in this regard can also be made to a case of Ajay Pal Singh vs. State of Punjab, 2003 (4) Recent Services Judgment 523 equal to 2003(4) Service Cases Today 121.

9. Having considered various issues raised in this petition in light of the aforestated principles of law, we are unable to see any element of arbitrariness or discrimination in the action the respondent authority in selecting respondent nos. 3 and 4 in preference to the petitioner. The said selection also does not appear to be violative of any statutory rules or regulations. The circular issued by the respondent authority no way supports the contentions raised by the petitioner in the present petition. Consequently this petition is dismissed, while leaving the parties to bear their own costs.

CHIEF JUSTICE

S.C.DHARMADHIKARI J.